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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of MARGARET M. and DAVID W. KAPRANOS.	
MARGARET M. KAPRANOS, Appellant, v. DAVID W. KAPRANOS, Respondent.	A105795 (Marin County Super. Ct. No. FL012120)

In this marital dissolution action, appellant Margaret Kapranos moved to set aside a judgment entered pursuant to a marital settlement agreement with respondent David Kapranos. The trial court denied her motion. On appeal,[1] Margaret contends that the trial court erred by failing to undertake a proper review of her motion by addressing pertinent statutory authority. We reverse in part and affirm in part the order after judgment.

[1] Margaret filed a timely notice of appeal from the order denying her motion to set aside the August 2003 judgment. This order is appealable as an order after judgment. (See Code Civ. Proc., § 904.1, subd. (a)(2).)

I. FACTS

A. *Marriage and Dissolution*

In September 1979, appellant Margaret Kapranos and respondent David Kapranos were married. Two sons were born of their union, one in 1982 and one in June 1985. In 1989, David's father died and David inherited his father's estate the following year. In February 1999, Margaret and David separated.

In May 2001, Margaret petitioned for dissolution of the marriage. Two months later, the family residence in Novato was sold for $1.2 million. Some of the $505,921 net proceeds of the sale of the family residence were distributed to Margaret and David. The remainder of those proceeds was held in a trust account by David's attorney. In May 2002,[2] Margaret prepared and served David with a preliminary and final declaration of disclosure.

As of June 30, the trust account held a balance of $385,201.92. In July, David's attorney sent Margaret's counsel a copy of the quarterly trust account statement, showing this balance. On September 2, Margaret sought another trust account disbursement. On September 13, a $20,000 check was sent to Margaret's attorney and David received a like amount from the trust, reducing the trust account balance to approximately $345,000. However, David's settlement conference statement—signed by counsel on September 18 and filed the following day—failed to reflect these $40,000 in disbursements, incorrectly setting forth the balance at its pre-disbursement balance of approximately $385,000.

In the settlement conference statement, David claimed a separate property interest in the trust account, because he could trace some of the funds in that account back to separate property inherited from his father. He also claimed that the community property portion of these proceeds should reimburse his construction company for almost $70,000 advanced to the community. He acknowledged that the

[2] All subsequent dates refer to the 2002 calendar year unless otherwise indicated.

remainder of the trust account was community property. On October 2, a judgment of dissolution was granted as to status.

B. *The Marital Settlement Agreement*

At an October 2 hearing, Margaret's attorney agreed on the record that a settlement had been reached. The trial court advised the parties that after the attorney read the terms of the agreement into the record, both parties would be placed under oath and questioned about their understanding of and agreement to its terms. If both parties agreed, then the case would be finished—the trial court warned that neither party could change his or her mind after that. Margaret and David each stated that they understood this. Then, Margaret's attorney read the terms of the marital settlement agreement into the record. One term specified that after David was paid $90,000, the remaining balance from the proceeds of the sale of the family residence—cited incorrectly as approximately $385,000—would be distributed to Margaret. The attorneys agreed that the terms read into the record were accurate.

Margaret testified under oath that she heard the terms of the marital settlement agreement read into the record, understood them, had sufficient time to discuss them with counsel, and agreed to be bound by them. Based on these responses, the trial court found that Margaret knowingly, intelligently and voluntarily entered into the terms of the marital settlement agreement. David gave similar testimony and was also found to be bound by the terms of the marital settlement agreement.

Both attorneys had asserted that Margaret and David were willing to waive a final declaration of disclosure. Margaret's attorney noted that her client was not waiving her right to any undisclosed assets. If assets were later discovered, they would be subject to division by the court. Initially, the trial court had declined to enter judgment during the hearing, instead making judgment conditional on the parties either exchanging final declarations of disclosure or filing a signed waiver of disclosure. He concluded that he could not pronounce judgment without such an executed document. The document was in court and later, the trial court stated that

the parties had signed a waiver of final right of disclosure. As such, the trial court pronounced that the terms of the agreement "shall be the Judgment of the Court."

That same date, Margaret and David each signed a written stipulation for mutual waiver of a final declaration of disclosure. The stipulation was also filed on the same date. (See Fam. Code,[3] § 2105, subd. (d).) The stipulation provided that each party had fully disclosed his or her assets and liabilities; that each entered into the waiver of a final declaration knowingly, intelligently and voluntarily; and that each understood that noncompliance with disclosure obligations would result in the court setting aside the judgment.

C. *David's Motion for Judgment*

Soon after this time, David's attorney sent Margaret's attorney a bank statement showing the balance of the trust account to be approximately $345,000, not $385,000. For Margaret, this raised an issue about whether a material mistake had been made in the marital settlement agreement. Margaret also received documentation of David's separate property tracing and found it to be deficient.

By February 2003, David sought to have judgment entered according to the marital settlement agreement. After the judgment was filed or at the same time as the filing, David would agree to stipulate to a modification of the stipulated judgment. He warned Margaret that if she did not do so by the end of the month, he would move to enter judgment. A proposed stipulation for waiver of final declarations of disclosure accompanied his letter. For her part, Margaret opposed the entry of a judgment, claiming that a mistake had been made. She argued that the trial court had concluded that it lacked jurisdiction to enter a judgment based on the marital settlement agreement. She also criticized David again for failing to produce sufficient evidence to support his separate property claims.

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[3] All subsequent statutory references are to the Family Code unless otherwise indicated.

In March 2003, David formally moved for entry of judgment according to the terms of the October 2 marital settlement agreement. (See Code Civ. Proc., § 664.6.) In her April 2003 opposition to the motion, Margaret again cited a jurisdictional bar to judgment. She asserted that neither party had served a final declaration of disclosure on the other and that neither had waived the right to disclosure.[4] She claimed that David had served a preliminary declaration of disclosure on August 31, 2001, but that she had not served her preliminary declaration because of lack of access to documents that David controlled. Margaret's counsel characterized the October 2 agreement as tentative and conditional. She also asserted that David had not provided her with requested documentation of his separate property claims. Each party sought sanctions from the other.

In his reply, David countered that in May, he had received Margaret's declaration of disclosure, which was both a preliminary and final document. He asserted that the October 2 marital settlement agreement was not tentative or conditional. In a separate declaration, his attorney challenged many of the factual assertions made by Margaret and her attorney in their opposition papers. David sought both entry of judgment pursuant to the marital settlement agreement and an award of attorney fees.

On June 2, 2003, Margaret filed and served a notice of rescission of the October 2 marital settlement agreement. She claimed that the marital settlement agreement read into the record on October 2 was based on mistake, fraud or undue influence. Margaret claimed that her consent was not real or free. (See Civ. Code, § 1567.) She repeated her prior assertions that the trial court could not have entered judgment on October 2 because the marital settlement agreement was conditional. On June 3, 2003, Margaret sought attorney fees from David. She also asked the trial court to modify the marital settlement agreement if judgment was to be entered on it.

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[4] In her opening brief, Margaret now acknowledges that she was then mistaken in this belief.

The modification would have fixed the trust account balance at $385,000 rather than awarding her the trust account proceeds remaining in the account after David received $90,000.

On June 3, 2003, a hearing was conducted on David's motion to enter judgment. The trial court seemed satisfied that the matter had been settled in October. After hearing, his motion was granted and $650 in attorney fees were awarded to his attorney as a sanction for requiring enforcement of the judgment. A formal order to this effect was filed on June 30, 2003. In its findings, the trial court concluded that the terms of the marital settlement agreement were clear; that the judge had advised the parties on the consequences of a settlement; and that both parties accepted the terms of the settlement. It also found that Margaret had forgotten that funds had been withdrawn from the trust account. The trial court concluded that this was an insufficient ground for failing to enforce the marital settlement agreement.

Even so, the trial court agreed to consider whether the parties had mutually agreed to rescind the marital settlement agreement. It necessarily rejected this conclusion when, on August 18, 2003, it entered judgment according to the terms of that agreement. Notice of entry of judgment was filed on August 22, 2003.

D. *Margaret's Motion to Set Aside Judgment*

In October 2003, Margaret moved to set aside the August 2003 judgment. Again, she asked that the trial court either vacate the marital settlement agreement or modify it to fix the trust account balance at $385,000 before David received any setoff. (See § 2122.) On November 7, 2003, David opposed the motion and sought a sanction of $2,750 in attorney fees.

The trial court's tentative decision was to deny Margaret's motion. On November 18, 2003, Margaret sought a statement of decision. The trial court expressly found that the motion to set aside was merely a restatement of arguments made in opposition to David's earlier motion to enforce the marital settlement agreement by entering judgment on it. It found that when that earlier motion was

resolved, the trial court made a finding of fact that Margaret had made a knowing and intelligent settlement in this matter. It further concluded that as Margaret presented no new facts or circumstances in support of her motion, no different outcome was warranted. David was awarded $2,000 in attorney fees. A statement of decision on this ruling and a formal order denying Margaret's motion to set aside the judgment were filed on December 29, 2003. Notice of entry of the order was filed on January 6, 2004.

II. MOTION TO SET ASIDE

A. *Standard of Review and Applicable Statutes*

Margaret contends that the trial court committed procedural error when ruling on her motion to set aside the judgment. She urges us to conclude that the trial court's reliance on the reasoning of its June 2003 order granting David's motion to enter judgment failed to satisfy its obligation to fully consider the issues raised in her motion to set aside the judgment. She reasons that if the trial court applied the applicable statutory provisions, she is entitled to have the August 2003 judgment set aside. She argues both that she presented uncontroverted evidence compelling the judgment to be set aside as a matter of law and that the trial court abused its discretion by failing to apply the cited statutes. (See §§ 2120, 2122.)

Preliminarily, the parties appear to disagree about the standard of review we must apply on appeal. Margaret argues that the trial court's error flowed from its failure to apply pertinent Family Code provisions. Thus, she reasons, she is entitled to reversal as a matter of law based on our independent review of the applicable legal principles and uncontroverted evidence. However, David counters that the trial court's exercise of discretion in refusing to set aside a judgment under section 2122 may only be reversed for an abuse of discretion.

We are satisfied that we understand the appropriate standard of review, depending on the underlying issue presented to us on appeal. Even though the trial court has considerable deference in ruling on a motion to set aside the judgment, the court must act in a manner that is consistent with fixed legal principles. (*In re*

Marriage of Heggie (2002) 99 Cal.App.4th 28, 33; *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138.) A trial court's exercise of discretion in refusing to set aside a judgment pursuant to section 2122 will be reversed on appeal if we find an abuse of discretion. (*In re Marriage of Varner, supra,* 55 Cal.App.4th at p. 138.) In effect, the trial court abuses its discretion if it fails to follow applicable rules of law when exercising that discretion.

The substantive law that applies in the case before us comes from the Family Code. Occasionally, the division of community property pursuant to a marital settlement agreement is inequitable because of one party's misconduct or nondisclosure. (§ 2120, subd. (b); *In re Marriage of Varner, supra,* 55 Cal.App.4th at p. 136.) The Legislature has determined that the need for finality of judgments in marital dissolution actions must be balanced against the need for proper division of marital property. (§ 2120, subd. (c).) In order to prevail on a motion to set aside a judgment based on a marital settlement agreement, the moving party must establish four elements. First, the moving party must establish inequity—an essential premise, that is not sufficient in and of itself to warrant setting aside a judgment. (§ 2123; *In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1344; *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 684-685 & fn. 11.) Second, the party must establish one or more statutory grounds for setting aside the judgment, such as mistake or failure to comply with statutory disclosure requirements. (§ 2122, subds. (e), (f).) Third, he or she must show that the statutory ground materially affected the original outcome. (§ 2121, subd. (b); *In re Marriage of Rosevear, supra,* 65 Cal.App.4th at p. 685, fn. 11; *In re Marriage of Brewer & Federici, supra,* 93 Cal.App.4th at p. 1345; *In re Marriage of Varner, supra,* 55 Cal.App.4th at p. 137.) Fourth, the moving party must demonstrate that he or she would materially benefit if the judgment were set aside. (§ 2121, subd. (b).) With the proper standard of review and the applicable statutory framework in mind, we turn to the merits of the issues that Margaret argues on appeal.

B. *Nondisclosure*

On appeal, Margaret asserts two statutory grounds for setting aside the judgment. First, she contends that David did not make the statutorily required disclosure that must precede a judgment based on a marital settlement agreement. She urges us to conclude that David misrepresented his claims that certain bank and financial accounts acquired during marriage could be traced to his separate property. In support of this claim of error in the trial court, Margaret stated that she entered into the marital settlement agreement on the basis of assurances of documentation that David did not later provide.

Spouses in a marital dissolution matter have a fiduciary duty to make accurate and complete disclosure of all assets and liabilities to each other. (§ 2102, subd. (a)(1); see § 721, subd. (b); *In re Marriage of Brewer & Federici, supra,* 93 Cal.App.4th at p. 1342.) The duty of disclosure arises without reference to any wrongdoing. (*Id.* at p. 1344.) Public policy supports this full disclosure of all marital assets and liabilities. (§ 2120, subd. (a).) Before or at the time of entering into a marital settlement agreement, the parties must *either* serve on each other a final declaration of disclosure or stipulate to a mutual waiver of the requirement of a declaration of disclosure. (§ 2105, subds. (a), (d).)

In this case, Margaret and David executed such a stipulation for mutual waiver of final declaration of disclosure on October 2. On the same date, the marital settlement agreement was read into the record and they agreed under oath to be bound by its terms. In her written stipulation, Margaret stated that each side had fully complied with statutory disclosure requirements, although she *knew* that David had not done so. She also agreed that she made a knowing, intelligent and voluntary waiver of a final declaration of disclosure that would, presumably, have included the proof that she now complains that she did not have. In essence, Margaret agreed that she was satisfied with the documentation that she had of David's separate property claims at the time that she entered into the marital settlement agreement. Having entered into the marital settlement agreement and having wrongly stated in her

waiver that David had given her all the disclosure that she needed, she cannot now argue that he failed to disclose information that she then knew was lacking.

The waiver Margaret and David signed did not limit the requirement to disclose assets and liabilities, but constituted a statement under penalty of perjury that full disclosure had been made. By law, noncompliance with the underlying disclosure obligations may result in the trial court setting aside the judgment, under appropriate circumstances. (§ 2105, subd. (d)(5).) However, in this matter, Margaret's approval of the marital settlement agreement and stipulated assertion that David had fully complied with statutory disclosure requirements constitutes her agreement that the proof he had supplied to her at that point was sufficient to prove his separate property claim to her satisfaction. When the moving party has all the information needed to determine the value of an asset but does not learn its true value, he or she may not later be heard to complain if the asset proves to be more valuable than first believed. (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 602; see *In re Marriage of Heggie, supra,* 99 Cal.App.4th at p. 34.) In the same manner, we conclude when the moving party knows that the spouse has not provided satisfactory proof of a separate property claim on a community property asset but opts to enter into a marital settlement agreement despite this lack of proof, the moving party may not later complain if later-supplied proof is not satisfactory.

Margaret asserts that the fact that she signed a waiver of final disclosure is not evidence that she knowingly and intelligently entered into the marital settlement agreement. However, the stipulation recites that she entered into it knowingly and intelligently. At the October 2 hearing, Margaret gave sworn testimony leading the trial court to conclude that she knowingly and intelligently entered into the terms of that agreement. In a similar case, we concluded that the type of voir dire made in the case before us was sufficient to prove that a spouse knowingly and intelligently entered into a marital settlement agreement. (See, e.g., *In re Marriage of Rosevear, supra,* 65 Cal.App.4th at pp. 685-686.) As in *Rosevear,* we find that Margaret's consent to the marital settlement agreement was clear. (See *id.* at p. 686.)

Both parties must fully comply with the mandatory disclosure requirements of section 2105 before judgment may be entered. (§ 2107, subd. (d); *In re Marriage of Jones* (1998) 60 Cal.App.4th 685, 694; *In re Marriage of Fell* (1997) 55 Cal.App.4th 1058, 1066.) In this matter, Margaret and David signed the stipulation on October 2. The record of the hearing conducted on that date supports the inference that they signed this stipulation in open court. The judgment enforcing the marital settlement agreement was formally entered 10 months later, in August 2003. In this matter, the disclosure requirements were satisfied by the October 2 stipulation well before the judgment was entered. Thus, Margaret has not established the statutory basis for setting aside the judgment on this ground. (See § 2122, subd. (f).)

C. *Mistake*

Margaret also cites mistake as a ground for setting aside the judgment. She contends that both parties mistakenly believed that the balance of the trust account was closer to $385,000 than $345,000, as both had apparently forgotten the September disbursement of $20,000 to each of them. When ruling on David's earlier motion to enforce the marital settlement agreement, the trial court specifically found that Margaret had forgotten that funds had been withdrawn from the trust account. It also concluded that this was an insufficient ground for failing to enforce the marital settlement agreement. It therefore entered judgment based on that agreement. (See Code Civ. Proc., § 664.6.)

Once Margaret moved to set aside the judgment, the trial court was required to conduct a somewhat different inquiry than it had when determining David's motion to enter judgment based on the marital settlement agreement. (See §§ 2120-2129.) Mistake *is* a statutory ground for setting aside the August 2003 judgment. (See § 2122, subd. (e).) The definition of mistake in this context is very broad, including mutual and unilateral mistakes of fact and mistakes of law. (*Ibid*.) The trial court's earlier finding that Margaret forgot about the September disbursements from the trust account is inconsistent with any conclusion other than that she made a mistake of fact. As the trial court's earlier findings necessarily established a statutory ground

for setting aside the judgment, it was insufficient for the trial court to state that no new facts or legal argument supported Margaret's motion to set aside.

Mistake is only one of four necessary elements that Margaret had to establish to compel the setting aside of the August 2003 judgment. (See pt. II.A., *ante*.) Assuming arguendo that we may draw legal conclusions on two of these elements—that the $40,000 at issue made the marital settlement agreement inequitable and that the setting aside of the judgment would materially benefit Margaret by allowing her to obtain her share of this sum—we cannot determine from the record before us whether this mistake materially affected the original outcome.

As the trial court erred in concluding that Margaret did not establish a statutory basis for setting aside the judgment based on mistake, it did not reach the further issue of whether that mistake was material. (See § 2121, subd. (b).) A judgment may not be set aside if the ground asserted as the basis for the setting it aside did not materially affect the challenged portion of the judgment. (See *In re Marriage of Steiner* (2004) 117 Cal.App.4th 519, 527 [nondisclosure].) Nothing in the trial court's two sets of findings answers the factual question of whether Margaret would have agreed to the marital settlement agreement if she knew the true value of the trust account or whether she would have refused to agree to it unless the marital settlement agreement was modified to reflect the account's actual balance.

As an appellate court, we have no power to make this factual finding—that is uniquely a trial court function. Thus, we must reverse this aspect of the trial court's order and remand this matter to that court for a limited hearing on this factual issue. If the trial court concludes that the mistake was material, Margaret would then be entitled to have the affected part of the August 2003 judgment set aside and/or modified. (See § 2125.) If the trial court concludes that the mistake was not material, it may then enter a new order denying the motion to set aside.[5]

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[5] In his brief, David asks us to order Margaret to pay his attorney fees as a sanction for forcing him to defend against a groundless appeal. As we find that one of

III. REMITTITUR

The order denying the motion to set aside judgment is reversed in part. The matter is remanded for a limited hearing on the question of whether the mistake was material, after which the trial court shall act in accordance with the directions of this opinion. In all other respects, the trial court's order is affirmed.

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Reardon, J.

We concur:

_____
Kay, P.J.

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Rivera, J.

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the issues that Margaret complains of on appeal is meritorious, we necessarily deny the request for attorney fees. (See Code Civ. Proc., § 907; *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 17; *Hale v. Laden* (1986) 178 Cal.App.3d 668, 675 [reasonable attorneys would agree appeal was meritless].)